U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-C-J-

DATE: SEPT. 12, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an anesthesiologist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that the proposed benefit of her work will be national in scope and that she has a past history of demonstrable achievement with some degree of influence on her field as a whole. The Petitioner submits letters of support, her published and presented work, documentation of her peer review activities, citation evidence, information about the shortage of anesthesiologists in the United States, three non-precedent decisions, and an article on citation analysis.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> > (B) Waiver of job offer –
> >
> > > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Director determined that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

At the time of filing, the Petitioner was employed as an attending pediatric anesthesiologist at The Petitioner submitted documentation showing that her work as an anesthesiologist is in an area of substantial intrinsic merit. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Director found that the proposed benefit of the Petitioner's work as an anesthesiologist would not be national in scope. The Petitioner provided evidence of her activities as a clinician such as administering anesthetics and ensuring her patients' safety. She also offered documentation reflecting that she lectures and conducts grand rounds at her hospital. The Director determined that the Petitioner's clinical and instructional activities as an anesthesiologist at would not impart national level benefits. The Director cited to *NYSDOT*, 22 I&N Dec. at 217, n.3 which mentions the limited scope "of a single schoolteacher in one elementary school." There is no documentary evidence establishing that the benefits of the Petitioner's clinical and instructional work would extend beyond the patients and staff at her hospital such that they will have a national effect. Treating patients and lecturing hospital staff, while important to does not rise to the level of having national scope to merit a waiver of the job offer requirement. Therefore, we concur with the Director's determination that the benefit of the Petitioner's clinical and teaching duties would not be national in scope.

However, in addition to her clinical and teaching activities at the record indicates that the Petitioner performs medical research in her specialty. The submitted documentation shows that the proposed benefit of her anesthesiology research has national and international implications, as the results from her work are disseminated to others in the field through conferences and journals. Accordingly, we find that the Petitioner meets the second prong of the *NYSDOT* national interest analysis, and the Director's determination on this issue is withdrawn.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of her published work, conference presentations, peer review activities, research projects, professional certifications, and medical training credentials, the Petitioner submitted various reference letters discussing her work in the field. For example, chairman of the anesthesiology department at stated that the Petitioner "plays a critical and leading role in educating both students and fellow physicians on various aspects of anesthesiology" at further explained that the Petitioner "delivers didactic lectures on a regular basis" and that her lectures are attended by hospital faculty, staff anesthesiologists, residents, interns, and medical students. While important to the staff, medical trainees, and patients at there is insufficient documentary evidence showing that the benefits of the Petitioner's lectures and instruction have extended beyond her hospital such that they have had a national effect or have otherwise influenced the field of anesthesiology as a whole.

also indicated that the Petitioner "has garnered significant acclaim for pioneering research that has resulted in presentations and publications in the most prestigious conferences and medical journals." further noted that the Petitioner's work has been published in

Regarding her published and presented work, there is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of her article or presentation.

With respect to the impact of her work, the Petitioner argues that the "widespread recognition and influence of [her] work on the field is [ ] exemplified by the evidence of independent citations to her work." She requests that we "consider the significance of her six citations from experts around the globe" for two of her published case studies. The appellate submission includes citation evidence from reflecting three independent cites to her article and one independent cite to her article In this instance, the record does not indicate that once disseminated through

[2] The two citation indices provided on appeal each had a duplicate citation; therefore, the record demonstrates only four independent citations and not six as claimed by the Petitioner. For example, the citation index for included both the English and Spanish version of the same article by Additionally, the citation index for contained both the English and German version of the same article by

publication or presentation, the Petitioner's work has garnered a significant number of independent citations or that her findings have otherwise influenced the field as a whole.

After requesting that we consider her citation record as evidence of her impact on the field, the Petitioner then argues that "comparison to such statistics as an average citation count for clinical research is flawed." The Director's decision, however, did not make any such comparison. Rather, the Director noted that "while the number of citations is not the sole means of evaluating influence on any field of endeavor, it may serve as an objective, reliable indicator of whether the Petitioner's work has had any influence on her field as a whole."

The Petitioner submits an article entitled Although the article discusses the limitations of popular bibliometric indicators, such as the h-index and the impact factor, and concludes that those indicators are not reliable in making "accurate between-field comparisons," it does not undermine the value of citations for assessing clinical research performance. For example, the article notes that "citation analysis is widely used in the assessment of research performance in the medical sciences." Furthermore, the Director's decision did not include any between-field comparisons, or rely upon the h-index or impact factor as bases for denial. Rather, the Director only noted that the Petitioner had not shown that her citation record was indicative of influence on the field as a whole. The aforementioned article's findings do not disprove that a high citation count in the clinical medical research area is a reliable indicator of significant impact in the field. It remains that a substantial number of favorable independent citations for an article or presentation is an indicator that others are familiar with the work and have been influenced by it. A lack of citations, on the other hand, is generally not suggestive of the work's impact in the field.

In addition, the Petitioner provides three non-precedent decisions from 2009 and 2010 in which we sustained appeals and noted that citations were not the only way to demonstrate sufficient influence on the field to justify a waiver of the job offer requirement. The Petitioner offers no arguments or evidence to establish that the facts of the instant petition are analogous to those in the non-precedent decisions. Furthermore, while 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. In the present matter, we will consider all of the Petitioner's evidence in the aggregate, and not just focus on the number of cites to her published and presented work.

a senior physician in the anesthesiology department at attested that the Petitioner's "work is affecting physicians and patients throughout the United States and the world" and pointed to the "tremendous national impact of her published research," but did not provide any examples of how the Petitioner's findings have affected practices at various medical centers or have otherwise influenced the field as a whole. USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

an adjunct professor of anesthesiology at the mentioned that the Petitioner has "presented her work before the

and the As such, [the Petitioner's] research has been distributed on an international scale and experts worldwide are familiar with her findings." In addition, a consultant anesthesiologist at in New Jersey, stated that the Petitioner authored a "case study on how a patient undergoing surgery in the beach chair position can experience neuroplaxia of the greater auricular nerve [ ] and how to avoid this complication. This unusual finding was so noteworthy that it was selected for presentation before the

With respect to the documentation reflecting that the Petitioner has presented her findings at anesthesiology meetings and medical conferences, we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that she shared her original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of her work, or that her findings have otherwise influenced the field of anesthesiology at a level that would support waiving the job offer requirement.

clinical professor of anesthesiology at at and the described the Petitioner's case study concerning an infant whose first exposure to anesthesia aided in diagnosing the child's laryngeotracheal stenosis. indicated that the Petitioner presented the case at the national conference and that "[t]through presentation . . . at this international forum, her work has been emulated nationwide," but did not offer any specific examples of its "nationwide" effect or impact on the field of anesthesiology as a whole. Although the Petitioner's medical case studies have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication, presentation, or funding, the research must offer new and useful information to the pool of knowledge. Not every anesthesiology resident who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is indicative of influence on the field as a whole.

an anesthesiologist with in New Jersey and a member of the adjunct faculty at stated that the Petitioner's 2009 article

was "so significant that it was accepted by for publication with minimal revisions." In addition, mentioned that the Petitioner's publication of the article demonstrated exposure of her work to "anesthesiologists worldwide" and to experts in "every medical subspecialty," but there is no evidence indicating that her findings have been frequently cited by other physicians, have altered treatment standards in the medical field, or have otherwise affected her field as a whole.

an anesthesiologist with and United Kingdom, indicated that the Petitioner "conducted a groundbreaking study on mechanism of diabetic neuropathy" and that the "study was critical in understanding the best practices in treating diabetic neuropathy and how to achieve optimal results." further stated that the Petitioner's article concerning the subject "is widely considered mandatory reading for anesthesiologist[s] and pain management expert[s] treating diabetic neuropathy" and that her work has "influenced the practice of medicine, with experts across [*sic*] utilizing her expertise in their own day-to-day treatment of patients." The record, however, does not contain supporting documentary evidence to corroborate claims. For instance, although he mentioned that the Petitioner's article "is widely considered mandatory reading," he did not identify any medical schools that have included her article in their training curricula or any national medical associations that have adopted the Petitioner's specific practices as part of their official guidance to physicians. Furthermore, the Petitioner has not submitted any evidence showing that her work has affected treatment protocols for diabetic neuropathy with corresponding improvement in patient outcomes, has garnered a substantial number of independent citations, or has otherwise influenced the field as a whole.

In addition, indicated "that there is a national shortage of anesthesiologists in the United States." On appeal, the Petitioner submits various articles that discuss the current and projected shortage of U.S. anesthesiologists. The U.S. Department of Labor addresses worker shortages through the labor certification process, and therefore a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See NYSDOT*, 22 I&N Dec. at 218. In addition, the exception for physicians at section 203(b)(2)(B)(ii) of the Act has specific provisions for those practicing in medically underserved areas or at Veterans Affairs facilities, outlined at 8 C.F.R. § 204.12.[3]

The Petitioner submitted letters of varying probative value. We have addressed their specific statements above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 15. In addition, uncorroborated claims are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *see also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the

[3] Section 203(b)(2)(B)(ii) of the Act describes an alternative waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. The waiver is limited to certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The Petitioner has not addressed or attempted to meet any of these regulatory requirements. Furthermore, the Petitioner's initial submission and response to the Director's request for evidence specifically requested classification pursuant to section 203(b)(2)(B)(i) of the Act.

petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

With regard to the Petitioner's peer review activities, the appellate submission includes a letter from the scientific affairs director of stating that the Petitioner "is one of the expert reviewers" for The Petitioner also submits December 2015 emails thanking her for reviewing manuscripts for and In addition, the record contains letters from the publisher of stating that the Petitioner reviewed articles or served as a consulting editor for and The submitted documents do not demonstrate that the Petitioner had performed any peer review work for or at the time of filing the Form I-140 petition on September 30, 2014. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider any peer review activity after September 30, 2014, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing. Furthermore, she did not submit evidence regarding the reputation or impact of the aforementioned journals, or documentation showing that her contributions to them have influenced others in the field.

As further evidence of her peer review activity, the Petitioner offers an August 2014 email thanking her for reviewing a manuscript for and information about the journal from its website. Regarding the Petitioner's services as a peer reviewer, it is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field, and there is no evidence demonstrating that the Petitioner's participation in the widespread peer review process is an indication that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the Petitioner has not established by a preponderance of the evidence that she has a past record of demonstrable achievement with some degree of influence on the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Therefore, the Petitioner has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter*

of Otiende, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-C-J-*, ID# 10143 (AAO Sept. 12, 2016)